

Remarks

The Office characterizes Applicants response filed August 16, 2004 as "not fully responsive," essentially on grounds that no claims to the elected invention remain pending. Applicants traverse this characterization.

In the Office Action dated January 7, 2004, the Office required restriction of the application to one of two groups: (1) kits comprising, at a minimum, stannous ion, an anion and carbon monoxide and (2) kits comprising at a minimum, stannous ion, an anion and a metal (Tc or Rc). See January 7, 2004 Office Action, page 2. The claims currently pending now are drawn to kits comprising stannous ion, an anion and a metal (the limitations recited for Group II) and therefore are directed to the elected invention of Group II.

The Office states that claim 26, now cancelled, represents an example of a non-elected invention because it relates to a kit that contains stannous ion, an anion and carbon monoxide. This claim also relates to a kit that contains stannous ion, an anion and a metal, which falls squarely in the Office's recitation of the characteristics of Group II. Claim 26, using the Group descriptions provided by the Office therefore falls into Group II and also represents an elected invention.

Applicants also would like to draw the Office's attention to the recitation of "carbon monoxide" in unamended claim 27 which evidences that carbon monoxide is not the factor which distinguishes the Groups. See claim 27, line 14. Another point of difference between claim 27 and the cancelled claims of Group I is the purpose and method for use of the kits; in particular the formula which is prepared using the kits is different. Claim 27 therefore is different from claim 26 for this additional reason.

It is Applicant's position that the Office has required a division of the invention into Groups and has provided unambiguous definitions of both claim Groups using open language. Applicant is within its rights to amend claims consistent with those definitions without being subject to further defacto restriction requirements. If it is the Office's intention to require further restriction of the application into a third Group which is drawn to kits comprising stannous ion, an anion, a metal (Tc or Re) and carbon monoxide (all the elements which characterize Group I and Group II as defined by the Office), on the grounds that such a composition is patentably distinct from both the claims of Group I and the claims of Group II, or to redefine Groups I and II so that Applicant's amended claims do

not fall within the definition of Group II, Applicant requests that the Office make the requirement official so that Applicants will have the opportunity to make a meaningful election. If the Office maintains the original restriction requirement, Applicant maintains that the amended claims are "drawn to a kit comprised at a minimum of a 'stannous ion' in combination, with 'an anion' and a metal which is 'technetium' or 'rhenium.'" Office Action of January 7, 2004, page 2. See claim 27, line 17 ("stannous ion"), line 19 ("an anion") and lines 20-21 ("a metal M selected from the group consisting of Mn, ^{99m}Tc, ¹⁸⁶Re and ¹⁸⁸Re").

Applicants therefore request consideration of the claims as amended in the response filed August 16, 2004 and consideration of the Information Disclosure Statement and references submitted therein.

Respectfully submitted,

By 

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